

**12439.** (a) Beginning July 1, 2002, any state position that is vacant for six consecutive monthly pay periods shall be abolished by the Controller on the following July 1. The six consecutive monthly pay periods may occur entirely within one fiscal year or between two consecutive fiscal years.

(b) The Director of Finance may authorize the reestablishment of any positions abolished pursuant to this section if one or more of the following conditions existed during part or all of the six consecutive monthly pay periods:

(1) There was a hiring freeze in effect during part or all of the six consecutive pay periods.

(2) The department has diligently attempted to fill the position, but was unable to complete all the steps necessary to fill the position within six months.

(3) The position has been designated as a management position for purposes of collective bargaining and has been held vacant pending the appointment of the director, or other chief executive officer, of the department as part of the transition from one Governor to the succeeding Governor.

(4) The classification of the position is determined to be hard-to-fill.

(5) Late enactment of the budget causes the department to delay filling the position.

(c) The Controller shall reestablish any position for which the director of the department in which that position existed prior to abolishment certifies by August 15 that one or more of the following conditions existed during part or all of the six consecutive pay periods:

(1) The position is necessary for directly providing 24-hour care in an institution operated by the state.

(2) The position is necessary for the state to satisfy any licensing requirements adopted by a local, state, or federal licensing or other regulatory agency.

(3) The position is directly involved in services for public health, public safety, or homeland security.

(4) The position is being held vacant because the previous incumbent is eligible to exercise a mandatory right of return from a leave of absence as may be required by any provision of law including, but not limited to, leaves for industrial disability, nonindustrial disability, military service, pregnancy, childbirth, or care of a newborn infant.

(5) The position is being held vacant because the department has granted the previous incumbent a permissive leave of absence as may be authorized by any provision of law including, but not limited to, leaves for adoption of a child, education, civilian military work, or to assume a temporary assignment in another agency.

(6) Elimination of the position will directly reduce state revenues or other income by more than would be saved by elimination of the position.

(7) The position is funded entirely from moneys appropriated pursuant to Section 221 of the Food and Agricultural **Code**, was established with the Controller pursuant to Section 221.1 of the Food and Agricultural **Code**, and directly responds to unforeseen agricultural circumstances requiring the relative expertise that the position provides.

(d) Each department shall maintain for future independent audit all records on which the department relied in determining that any

position or positions satisfied one or more of the criteria specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(e) The only other exceptions to the abolishment required by subdivision (a) are those positions exempt from civil service or those instructional and instruction-related positions authorized for the California State University. No money appropriated by the subsequent Budget Act shall be used to pay the salary of any otherwise authorized state position that is abolished pursuant to this section.

(f) The Controller, no later than September 10 of each fiscal year, shall furnish the Department of Finance in writing a preliminary report of any authorized state positions that were abolished effective on the preceding July 1 pursuant to this section.

(g) The Controller, no later than October 15 of each fiscal year, shall furnish the Joint Legislative Budget Committee and the Department of Finance a final report on all positions that were abolished effective on the preceding July 1.

(h) Departments shall not execute any personnel transactions for the purpose of circumventing the provisions of this section.

(i) Each department shall include a section discussing its compliance with this section when it prepares its report pursuant to Section 13405.

(j) As used in this section, department refers to any department, agency, board, commission, or other organizational unit of state **government** that is empowered to appoint persons to civil service positions.

(k) This section shall become operative July 1, 2002.